IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 1395

COMMISSIONER OF INTERNAL REVENUE,
Petitioner

v.

ESTATE OF FRANCOIS L. CHURCH, Deceased,
EDWARD E. BLACK, Executor,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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OPINIONS BELOW

The memorandum opinion of the Tax Court (R. 11-12) is not officially reported. The opinions in the Circuit Court of Appeals (R. 30-35) are reported at 161 F. (2d) 11.

GROUNDS OF JURISDICTION

Petitioner invokes the jurisdiction of this Court under Section 240(a) of the Judicial Code. Respondent concedes the jurisdiction of this Court.

STATEMENT OF THE CASE

Respondent is the estate of Francois L. Church who died on December 11, 1939 a resident of the State of New Jersey (R. 9). The estate tax return was filed with the Collector of Internal Revenue for the Fifth District of New Jersey on March 10, 1941 (R. 9). The question before the lower courts was whether the corpus of an inter vivos trust established by decedent in 1924 should be included in his gross estate in computing the federal estate tax (R. 8-30).

By deed of trust dated May 17, 1924, decedent transferred to himself, E. Dwight Church and Charles T. Church, as trustees, 1,000 shares of stock of Church & Dwight Company on the terms hereinafter described (R. 9). The trust instrument was executed and delivered in New York (R. 9). Decedent continuously resided in New York until his removal to New Jersey in 1937 (R. 9). The other two trustees, decedent's brothers of the half blood, have at all times resided in New York (R. 9). The shares constituting the corpus of the trust and the bank account of the trust have always been located in New York (R. 9).

A few months before he created the trust decedent had attained the age of twenty-one and had received his property which had theretofore been held and managed for him by his mother (R. 9, 26). The decedent's principal asset was the 1,000 shares of stock, which were in a corporation closely held by the Church and Dwight families (R. 9-10).

In March, 1924 it had come to the attention of E. Dwight Church, an older brother of the half blood, that decedent was leading a riotous existence, drinking heavily, squandering his money and associating with companions of questionable repute (R. 10). He had a discussion with

decedent. He expressed to decedent a fear that decendent would dissipate the stock which was his principal asset (R. 10). He suggested to decedent that he place his stock in trust in order to prevent it from being dissipated and to assure decedent a life income (R. 10). Decedent thereupon offered to give the stock outright to E. Dwight Church (R. 18), but E. Dwight Church refused the offer and sent decedent to the family attorney to place the stock in trust (R. 10, 18). The purpose, as found by the Tax Court, was to insure decedent an income for his life (R. 10).

The trust indenture here under review resulted. It provided that the income should be paid to decedent for life and that upon his death the trust should terminate and the corpus be distributed to his issue then surviving (R. 10). The indenture provided that in default of issue the corpus should be distributed in equal shares to the brothers and sisters of the decedent then surviving, with any child or children of a deceased brother or sister to take the share which their parent would have been entitled to receive if living (R. 10). No power to alter, amend or revoke was reserved (R. 10).

At the time the trust was created decedent was unmarried and had no issue (R. 10). He had one brother and one sister of the full blood and four brothers of the half blood (R. 10). There were also seven children of the brothers of the half blood then alive (R. 10). Of these thirteen people, seven were younger than decedent (R. 26-27).

Decedent died at the age of thirty-seven without issue (R. 17, 26). There survived him sixteen persons who were brothers and sisters of the half and full blood or the children of such brothers and sisters (R. 10-11; 26-27). Of these

sixteen people, ten were younger than decedent (R. 26-27). At the time of decedent's death the corpus of the trust was worth $188,800 (see original record filed pursuant to stipulation at R. 36-37).

If there existed any possibility of reverter to decedent or his estate by operation of law on the date of decedent's death the actuarial value of such possibility was less than three ten-thousandths of one cent (R. 24). This value is computed on three assumptions favorable to petitioner but not necessarily correct,—namely, that decedent would have lived a normal span of life, that he would have had no issue and that his brothers and sisters would have had no additional children (R. 23-24).

The petitioner included the value of the trust in decedent's gross estate on the ground that the trust was "a transfer intended to take effect in possession or enjoyment at or after decedent's death" (R. 11).

The Tax Court held that the gift in trust was not made in contemplation of death (R. 11), that "the grantor during his lifetime disposed of his interests in the corpus of the trust as well as any man could" (R. 12), and that the gift was not one intended to take effect in possession or enjoyment at or after death (R. 12).

Petitioner's appeal to the Circuit Court of Appeals was argued twice,—once before three of the judges and again on the court's own motion, before the full court (R. 28). The Circuit Court of Appeals has affirmed on the grounds that it could not identify a clear-cut mistake of law in the Tax Court decision and that it was not its task to draw inferences from facts or to supplement stipulated facts (R. 31). The Circuit Court of Appeals gave no indication as to what result it would have reached if its powers to review

were broader than it understood them to be. One judge dissented on the grounds that in his opinion a reversionary interest in favor of decedent did exist by operation of law and that under the decisions of this Court in *Fidelity Co.* v. *Rathensies*, 324 U. S. 108, *Commissioner* v. *Estate of Field*, 324 U. S. 113 and *Goldstone* v. *United States*, 325 U. S. 687, petitioner was entitled to judgment (R. 32-35).

SUMMARY OF ARGUMENT

Respondent opposes petitioner's application on the following grounds:

1. The decision of the Circuit Court of Appeals is not in conflict with the decision of another circuit court of appeals on the same matter.

2. The Circuit Court of Appeals has not decided an important question of federal law which should be settled by this Court.

3. The Circuit Court of Appeals has decided no federal question in a way probably in conflict with applicable decisions of this Court.

4. The Circuit Court of Appeals has not decided an important question of local law in a way probably in conflict with applicable local decisions.

ARGUMENT

Point 1

THE DECISION OF THE CIRCUIT COURT OF APPEALS IS NOT IN CONFLICT WITH THE DECISION OF ANOTHER CIRCUIT COURT OF APPEALS ON THE SAME MATTER.

The converse of this proposition is the only ground which petitioner advances in support of his application (pp. 5-6 of the Petition). He contends that the decision below is in conflict with *Estate of Sidney Spiegel* v. *Commissioner*, 159 F. (2d) 257 (C. C. A. 7th, 1946); *Commissioner* v. *Bank of California*, 155 F. (2d) 1 (C. C. A. 9th, 1946); and *Commissioner* v. *Bayne's Estate*, 155 F. (2d) 475 (C. C. A. 2d, 1946). Petitioner says that those cases are "in conflict with the instant case both as to taxability and reviewability" (Pet., p. 6).

In so far as taxability is concerned, petitioner is clearly mistaken. The Circuit Court of Appeals has not attempted to decide that question in the instant case. It has affirmed because it believes that under the decisions of this Court it lacks the power to review the Tax Court's decision (R. 31).

And on the issue of reviewability there is no conflict between the circuits because the underlying circumstances in the cases petitioner cites were so substantially different from those in the instant case that a different conclusion as to reviewability was justified.

In the only other case involving a New York trust (*Bayne's Estate*) there does not appear to have been any dispute as to whether the corpus would revert to the settlor if he survived all designated takers. Here there is. The Tax

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Court concluded in the instant case that the decedent had disposed of his interest in the property as well as any man could (R. 12). There is no certainty that the Tax Court erred in this respect. See *Central Hanover Bank & Trust Company* v. *United States*, 58 F. Supp. 565 (Ct. Cls., 1945).

In none of the other cases was there affirmative and positive evidence that the decedent intended to give away his entire interest in the corpus. Here he cared so little about the stock that he offered to give it outright to his brother but was persuaded to retain a life estate (R. 18). If the statutory word "intended" means anything, it is clear that decedent never intended to keep any interest in the corpus. Moreover the Tax Court has found that decedent's purpose in placing the stock in trust was "to assure decedent an income for his life" (R. 10).

In none of the other cases was the disposition so complete in fact. The possibility of reverter in the instant case, if any there was, was worth less than three ten-thousandths of one cent (R. 24). That means it was worthless. To all intents and purposes it did not exist.

There is so much difference in the evidence before the Tax Court in the instant case from the evidence in the cases decided in the other three circuits that there cannot be said to be any real conflict in the respective results on the question of reviewability.

Point 2

THE CIRCUIT COURT OF APPEALS HAS NOT DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH SHOULD BE SETTLED BY THIS COURT.

The court immediately below did not attempt to decide whether a remote reverter by operation of law existed or

whether, if it existed, the corpus of the trust should be included in the decedent's gross estate. It affirmed the Tax Court because it was unable to identify any clear-cut mistake of law. (R. 31).

It certainly understood correctly its powers of review of the Tax Court as laid down in a series of decisions by this Court. *Wilmington Trust Company* v. *Helvering*, 316 U. S. 164; *Dobson* v. *Commissioner*, 320 U. S. 489; *Equitable Life Assurance Society* v. *Commissioner*, 321 U. S. 560; *Commissioner* v. *Scottish American Co.*, 323 U. S. 119; *Choate* v. *Commissioner*, 324 U. S. 1; *Trust of Bingham* v. *Commissioner*, 325 U. S. 365; *Kelley Co.* v. *Commissioner*, 326 U. S. 521.

And it applied the rules correctly. The Tax Court found as a fact that decedent placed the stock in trust to insure him a life income, as a mixed question of law and fact that he disposed of his interest in the corpus as well as any man could, and as a question of law that the mere possibility of reverter by operation of law, if any existed, was not sufficient to bring the facts within the doctrine of *Helvering* v. *Hallock*, 309 U. S. 106. The first finding was amply supported by the evidence. The second, in so far as based on fact, was amply supported by the evidence and, in so far as based on law, was not clearly contrary to the law of New York. That being so, it was neither necessary nor proper for the Circuit Court of Appeals to consider the third.

Point 3

THE CIRCUIT COURT OF APPEALS HAS DECIDED NO FEDERAL QUESTION IN A WAY PROBABLY IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

The Circuit Court of Appeals has followed the decisions of this Court in limiting its power of review. Further than that it has not attempted to go.

Point 4

THE CIRCUIT COURT OF APPEALS HAS NOT DECIDED AN IMPORTANT QUESTION OF LOCAL LAW IN A WAY PROBABLY IN CONFLICT WITH APPICABLE LOCAL DECISIONS.

The Circuit Court of Appeals has not purported to decide, and has not decided, any question of local law.

CONCLUSION

The petition should be denied.

Respectfully submitted,

WILLIAM W. OWENS,
Attorney for Respondent.

New York, N. Y.
June 9, 1947.